

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

IN THE MATTER OF) Case No. 06-02229-lmj11
DIOCESE OF DAVENPORT,)
Debtor.) Chapter 11
)) Honorable Lee M. Jackwig
))

**RESPONSE OF THE SETTLEMENT TRUSTEE TO OBJECTIONS
TO MOTION TO AUTHORIZE FINAL DISTRIBUTION
AND TERMINATE THE SETTLEMENT TRUST**

Eric Schwarz, the Settlement Trustee (the “Settlement Trustee”) of the Diocese of Davenport Qualified Settlement Trust (the “Settlement Trust”), hereby responds to the two letter objections regarding the *Settlement Trustee’s Motion to Authorize Final Distribution and Terminate the Settlement Trust* [Docket No. 462] (the “Motion”).

I. **OBJECTIONS**

1. The Settlement Trustee has received two letter objections (the “Objections”) from abuse victims (“the “Tort Victims”) who did not file Allowed Unknown Tort Claims on or before the tenth anniversary of the Effective Date of the Plan, i.e., May 29, 2018. The Objections were sent to the Court, and to preserve the confidentiality of the victims, are identified as “Objection 1” (dated May 15, 2019) and “Objection 2” (undated).

2. The Tort Victims each argue that they were unaware of the Diocese of Davenport bankruptcy case and deadline by which Unknown Tort Claims were to be filed. Specifically,

Objection 1 seeks disapproval of any funds distributed to charities rather than victims such as himself. Objection 2 seeks to have his claim included and paid as other allowed tort claims.

**II.
POSITION OF SETTLEMENT TRUSTEE**

3. The Court's *Order Confirming Debtor's Second Amended Joint Plan of Reorganization* (the "Confirmation Order"), confirming the *Second Amended Joint Plan of Reorganization Proposed by Debtor and Official Committee of Unsecured Creditors, Dated as of April 3, 2008* (the "Plan"), established, under Article 11.6.2.1 of the Plan, that entitlement for unknown tort claims to distributions under the Settlement Trust required an Allowed Unknown Tort Claim (as defined in the Plan) to be filed on or before the tenth anniversary of the Effective Date of the Plan, i.e., May 29, 2018. The Tort Victims concede they did not file a timely Allowed Unknown Tort Claim.

4. The Settlement Trustee is unaware of a legal basis for the Tort Victims to participate in distributions of the Settlement Trust. While Rule 60 of the Federal Rules of Civil Procedure may provide potential grounds for relief from a final order under certain circumstances such as excusable neglect, Rule 9024 of the Federal Rules of Bankruptcy Procedure, which makes Rule 60 applicable to bankruptcy cases, explicitly limits grounds for relief from a confirmation order to fraud, and requires such relief be sought within 180 days from entry of the confirmation order.

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5. The Settlement Trustee did not withdraw the Motion after receiving Objection 1 and Objection 2 since there appears to be no legal basis for providing the Tort Victims entitlement to participate in distributions under the Settlement Trust.

Respectfully submitted,

Dated: June 13, 2019

PACHULSKI STANG ZIEHL & JONES LLP

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Davenport Qualified Settlement Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies, under penalty of perjury, that on June 13, 2019, a copy of the **SETTLEMENT TRUSTEE'S MOTION TO AUTHORIZE FINAL DISTRIBUTION AND TERMINATE THE SETTLEMENT TRUST** to which this certificate is attached was (1) caused to be served by means of electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities, for parties and/or counsel who have provided email addresses and are registered through the ECF System; and (2) was mailed via the United States Mail with postage fully paid to the parties displayed below, which parties were not served by the Court's electronic noticing system.

I served two abuse survivors who notified the Settlement Trustee after the ten year anniversary of the Effective Date, that they have abuse claims against the Debtor. In accordance with the Bankruptcy Court's order regarding filing proofs of claim (Docket no. 97), I am not including their identifying information on this certificate of service. A certificate of service with their identifying information is being filed under seal.

/s/ Sophia L. Lee

Sophia L. lee

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